

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

Audit Referral: AR 17-01

DATE REFERRED: January 24, 2017

DATE OF NOTIFICATION: January 26, 2017

DATE OF LAST RESPONSE: None

DATE ACTIVATED: February 16, 2017

ELECTION CYCLE: 2012

EXPIRATION OF SOL: February 11, 2016 to
January 4, 2018

SOURCE:

Audit Referral

RESPONDENTS:

Utah Republican Party and Abram Young in his
official capacity as Treasurer

INTERNAL REPORTS CHECKED:

Audit Documents

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

RAD Referral: 15L-47R

DATE REFERRED TO ADRO: December 3, 2015

DATE OF NOTIFICATION: June 9, 2016

LAST RESPONSE RECEIVED: August 1, 2016

DATE ACTIVATED: February 16, 2017

ELECTION CYCLE: 2014

EXPIRATION OF SOL: September 10, 2019

SOURCE:

RAD Referral

RESPONDENTS:

Utah Republican Party and Abram Young in his
official capacity as Treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)(1)-(5)

52 U.S.C. § 30104(b)(8)

52 U.S.C. § 30116(a)(1)(D)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

11 C.F.R. § 104.3(d)

11 C.F.R. § 104.11(a)

11 C.F.R. § 106.7(d)

11 C.F.R. § 110.9

INTERNAL REPORTS CHECKED: RAD Reports
Disclosure Reports

I. INTRODUCTION

These matters arise from an audit of the Utah Republican Party's ("Committee's") activity during the 2012 election cycle,¹ and a Reports Analysis Division ("RAD") referral to the Alternative Dispute Resolution Office ("ADRO") of the Committee's activity in the 2014 election cycle, which was subsequently referred to the Office of General Counsel (the "RAD Referral").

On January 6, 2017, the Commission approved the Final Audit Report regarding the 2012 cycle activity, and the Audit Division referred five findings to OGC for possible enforcement action: 1) receipt of prohibited contributions; 2) receipt of excessive contributions; 3) misstatement of financial activity; 4) recordkeeping for employees; and 5) reporting of debts and obligations. OGC notified the Committee of the referral, but the Committee did not file a response.

Those potential violations involved prohibited and excessive contributions, mathematical discrepancies, failure to provide supporting schedules, failure to properly itemize contributions from individuals, federal election activity/Levin funds, and allocated federal and

¹ See Attach. 1, Final Audit Report.

1 non-federal activity.

2
3 During the ADR process, the Committee sent a letter to the Commissioners on May 5,
4 2016, arguing that a monetary penalty was inappropriate and offering to implement "robust
5 qualitative reforms" instead.³ The Committee contended that ever since *Citizens United v.*
6 *FEC*,⁴ the Committee has had high employee turnover rates and trouble raising funds, which
7 hampered its compliance efforts. Ultimately, ADR failed, and on June 2, 2016, ADRO referred
8 the matter to OGC.⁵ In accordance with Commission procedures, OGC notified the Committee
9 of the transfer on June 9, 2016.

10 The Committee responded by asserting that the transfer to OGC was "premature," and
11 that ADRO improperly terminated negotiations following its May 5 letter to the
12 Commissioners.⁶ The Committee further blamed its poor financial condition and high turnover
13 rate on "challenges with its report preparation and other tasks." The Committee did not contest
14 the merits of the alleged violations; rather, it contended that all of RAD's requests for additional
15 information ("RFAs") had "been resolved to the full satisfaction of the Party's [RAD] analyst."⁷

³ On May 25, 2016, the Committee apparently re-sent the same letter to the Commissioners.

⁴ 558 U.S. 310 (2010).

⁵ RAD Referral 15L-47 Memorandum from Lynn Fraser, ADRO to Kathleen Guith, OGC (June 2, 2016);
see also Guidebook for Complainants and Respondents on the FEC Enforcement Process at 24 (May 2012).

⁶ Resp. at 1. The Committee contends that it sent the letter to the Commissioners at the advice of ADRO,
which ADRO disputes.

⁷ Resp. at 1. In documents attached to RAD's referral to ADRO, RAD identified several RFAs to which the
Committee failed to respond or take appropriate remedial action.

1 For the reasons that follow, we recommend that the Commission open a MUR as to both
2 the Audit and RAD referrals, and find reason to believe that the Committee knowingly accepted
3 prohibited contributions in violation of 52 U.S.C. § 30118(a), knowingly accepted excessive
4 contributions in violation of 52 U.S.C. § 30116(f), and made reporting errors in violation of
5 52 U.S.C. § 30104(b)(8), 11 C.F.R. §§ 104.3(d) and 106.7(d)(1). Additionally, we recommend
6 that the Commission authorize pre-probable cause conciliation.

7 II. FACTUAL AND LEGAL ANALYSIS

8 A. Audit Report (2012 Cycle Activity)

9 Five findings from the Audit Report were referable to OGC, and we recommend that the
10 Commission pursue four of them. Of these four, the first two concern impermissible
11 contributions and the last two concern reporting violations.⁸ As mentioned before, the
12 Committee did not file a response as to the Audit Referral.

13 1. Prohibited Contributions

14 Corporations are prohibited from contributing to federal political committees (other than
15 independent-expenditure-only committees and hybrid committees), and political committees may
16 not knowingly accept prohibited corporate contributions.⁹ The Commission found that the
17 Committee received \$23,600 in corporate contributions that it untimely transferred to a non-
18 federal account.¹⁰

⁸ The Audit Division also referred a finding regarding misstatement of financial activity in 2011, but this activity is beyond the statute of limitations. See 28 U.S.C. § 2462; AR 17-01 at 1 (Utah Republican Party); see also Audit Division 2011-2012 Materiality Thresholds (approved May 7, 2013).

⁹ 52 U.S.C. § 30118(a); Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011).

¹⁰ Attach. 1, Final Audit Report at Finding 1.

1 **2. Excessive Contributions**

2 The contribution limit to State party committees is \$10,000 per year.¹¹ No committee
3 may knowingly accept more than the contribution limit.¹² The Commission found that the
4 Committee received \$42,925 in excessive contributions that it untimely transferred to a non-
5 federal account.¹³

6 **3. Recordkeeping for Employees**

7 Commission regulations provide that State, district, and local party committees must
8 maintain monthly employee payroll logs. Salaries, wages, and fringe benefits "[paid] to State,
9 district, or local party committee employees who spend 25 percent or less of their compensated
10 time in a given month on Federal election activity or on activity in connection with a Federal
11 election" may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds
12 from the committee's federal and non-federal accounts.¹⁴ Commission regulations also provide
13 that when allocating salary, wages, and fringe benefit payments, political party committees are
14 required to "keep a monthly log of the percentage of time each employee spends in connection
15 with a Federal election."¹⁵ As set forth in the Final Audit Report, the Commission found that the
16 Committee failed to maintain monthly payroll logs totaling \$270,738 for 2011 and 2012.¹⁶

¹¹ 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. § 110.1(c)(5).

¹² 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

¹³ Attach. 1, Final Audit Report at Finding 2; *see also* 11 C.F.R. § 103.3(b)(3).

¹⁴ 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), (d)(2).

¹⁵ 11 C.F.R. § 106.7(d)(1).

¹⁶ Attach. 1, Final Audit Report at Finding 4. Payroll amounts are stated net of taxes and fringe benefits. The Committee submitted an affidavit in response to the audit that stated that the identified employees did not spend more than 25 percent of their time on activities in connection with a federal election. The Commission found that the affidavit did not resolve the issue because it did not document the time the employee spent on activities in

4. Reporting of Debts and Obligations

Political committees must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.¹⁷ Debts of \$500 or less must be reported no later than 60 days after the obligation is incurred, while debts of more than \$500 must be reported as of the date the obligation is incurred.¹⁸ The Audit Division concluded that the Committee failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323.¹⁹ In response, the Committee amended its reports to disclose debts totaling \$101,711, but maintained that \$94,132 of the \$205,323 did not need to be disclosed.²⁰ The Commission, however, agreed with the Audit Division and found that the Committee failed to disclose debts and obligations of \$205,323.

The Committee's four violations are clear, and it acknowledged them. Accordingly, we recommend that the Commission find reason to believe that the Committee knowingly accepted corporate contributions in violation of 52 U.S.C. § 30118(a), knowingly accepted excessive contributions in violation of 52 U.S.C. § 30116(f), failed to maintain monthly employee payroll logs in violation of 11 C.F.R. § 106.7(d)(1), and failed to report debts and obligations as identified in the Final Audit Report in violation of 52 U.S.C. § 30104(b)(8).

connection with a federal election, nor was it maintained prior to audit notification. The Committee represented that it planned to maintain employee payroll logs in the future.

¹⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

¹⁸ 11 C.F.R. § 104.11(b).

¹⁹ Attach. 1, Final Audit Report at Finding 5.

²⁰ The Committee argued that the debts and obligations of one staff member totaling \$94,132 were not required to be disclosed because the staff member submitted the request for reimbursement late and, therefore, the Committee had no knowledge of the debts as they were incurred. Once the staff member submitted a request for reimbursement, the Committee asserts it typically reimbursed the staff member within one week. The Commission found that the Committee had provided insufficient documentation to corroborate its assertions.

B. RAD Referral (2014 Cycle Activity)

The RAD Referral contains many potential violations regarding excessive and prohibited contributions, mathematical discrepancies, failure to provide supporting schedules, failure to properly itemize contributions from individuals, federal election activity/Levin funds, and allocated federal and non-federal activity. The Committee, in its response to the referral to OGC, does not dispute the violations. We recommend that the Commission pursue the violations regarding the prohibited contributions and an excessive contribution.

RAD identified two prohibited corporate contributions totaling \$6,000.²¹ Although the Committee indicated in an amended disclosure report that it would transfer the funds to a non-federal account and report the transfer "in the next regularly scheduled FEC report,"²² the Committee has not submitted information indicating that it has done so.

RAD also identified two excessive contributions of \$15,000 and \$11,000, the first of which was reduced by \$5,000 due to a same-day transfer to a non-federal account.²³ In response to RFAs, the Committee untimely refunded the remaining excessive \$10,000 and alerted RAD that it had timely reattributed and transferred the other excessive \$11,000 to a non-federal account.²⁴

As to the remainder of the potential violations, the Committee voluntarily resolved most of them, although it failed to address or respond to certain RFAs.

²¹ RAD Referral at 1; *see also* 52 U.S.C. § 30118(a).

²² *See* Utah Republican Party Amended October Monthly Report at 8 (May 14, 2015).

²³ *See* Utah Republican Party February 2014 Report at 6, 11 (Feb. 20, 2014); RFAI – February Monthly at 1 (Apr. 17, 2014); Utah Republican Party Amended October Monthly Report at 13 (May 14, 2015); RAD Referral at 1; *see also* 52 U.S.C. §§ 30116(a)(1)(D), (f); 11 C.F.R. § 110.9.

²⁴ RAD Referral at 1-2 and documents attached thereto.

1 We recommend that the Commission find reason to believe that the Committee violated
2 52 U.S.C. §§ 30118(a) and 30116(f) by knowingly accepting the two corporate contributions and
3 the \$10,000 excessive contribution. In light of the Committee's timely corrective action with
4 respect to the other excessive contribution and its adequate response to the majority of the
5 RFAIs, we do not recommend further reason-to-believe findings in connection with the RAD
6 Referral.²⁵

²⁵ Although the prohibited and excessive contributions in the RAD Referral would not separately satisfy referral thresholds directly to OGC, this matter is properly referred to OGC because ADR was unsuccessful, and the Audit Referral also includes violations for the receipt of excessive and prohibited contributions, making combined consideration efficient. *See n. 5; Compare* MUR 6622 (Kerry Bentivolio for US Congress) (Commission found reason to believe in RAD Referral 14L-18R, which was referred to OGC after unsuccessful ADR) and MUR 6759 (California Real Estate Political Action Committee) (Commission found reason to believe in RAD Referral 13L-02R, which was referred to OGC where committee refused to participate in ADR) *with* RR11L-29R (Freedom's Defense Fund) (Commission declined to open a MUR in matter referred to OGC after unsuccessful ADR in light of non-substantive nature of violations and committee's corrective actions). The RAD Referral is distinguishable from Freedom's Defense Fund because the violations are substantive, and include unresolved prohibited contributions.

1

2 **IV. RECOMMENDATIONS**

3 1. Open a MUR in AR17-01;

4

2. Merge RR15L-47R into the MUR;
3. Find reason to believe that Utah Republican Party and Abram Young in his official capacity as treasurer violated 52 U.S.C. § 30118(a);
4. Find reason to believe that Utah Republican Party and Abram Young in his official capacity as treasurer violated 52 U.S.C. § 30116(f);
5. Find reason to believe that Utah Republican Party and Abram Young in his official capacity as treasurer violated 11 C.F.R. § 106.7(d)(1);
6. Find reason to believe that Utah Republican Party and Abram Young in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(8);
7. Approve the attached Factual and Legal Analysis;
8. Authorize pre-probable cause conciliation with Utah Republican Party and Abram Young in his official capacity as treasurer;
9. Approve the attached proposed conciliation agreement; and
10. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement



3/29/17

DATE

Stephen Gura
Deputy Associate General Counsel for
Enforcement



Mark Allen
Assistant General Counsel



Nicholas I. Bamman
Attorney

Attachments:

1. Final Audit Report
- 2.
3. Factual & Legal Analysis

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Final Audit Report of the Commission on the Utah Republican Party

(January 1, 2011 - December 31, 2012)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 3)

The Utah Republican Party is a state party committee headquartered in Salt Lake City, Utah. For more information, see the chart on the Committee Organization, p.3.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals and Political Committees	\$ 753,650
○ Transfers from Affiliated and Other Political Committees	1,119,025
○ Transfers from Non-Federal Accounts	880,121
○ Other Receipts	114,894
Total Receipts	\$ 2,867,690
• Disbursements	
○ Operating Expenditures	\$ 2,388,485
○ Federal Election Activity	390,806
○ Transfers to Affiliated and Other Political Committees	9,152
○ Other Disbursements	38,475
Total Disbursements	\$ 2,826,918

Commission Findings (p. 4)

- Receipt of Prohibited Contributions (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Misstatement of Financial Activity (Finding 3)
- Recordkeeping for Employees (Finding 4)
- Reporting of Debts and Obligations (Finding 5)
- Apparent Excessive Contribution – Staff Advance (Finding 6)

Additional Issue (p. 6)

- Recordkeeping for Employees

¹ 52 U.S.C. §30111(b).

Final Audit Report of the Commission on the Utah Republican Party

(January 1, 2011 - December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the Utah Republican Party (URP), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of disbursements, debts and obligations;
5. the disclosure of expenses allocated between federal and non-federal accounts;
6. the consistency between reported figures and bank records;
7. the completeness of records; and
8. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with URP requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed URP representatives of the payroll requirement and the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to URP employees paid with 100 percent federal funds and reported as such.

Audit Hearing

URP declined the opportunity for a hearing before the Commission on the matters presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	March 16, 1978
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	Salt Lake City, Utah
Bank Information	
• Bank Depositories	One
• Bank Accounts	Four Federal and Two Non-Federal
Treasurer	
• Treasurer When Audit Was Conducted	Dave Crittenden (9/20/13 – 5/05/14) Cameron Robinson (5/06/14 – 12/10/15) Abram Young (12/11/15 – Present)
• Treasurer During Period Covered by Audit	Mike McCauley
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff and Treasurer

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 421
Receipts	
○ Contributions from Individuals and Political Committees	753,650
○ Transfers from Affiliated and Other Political Committees	1,119,025
○ Transfers from Non-Federal Accounts	880,121
○ Other Receipts	114,894
Total Receipts	\$2,867,690
Disbursements	
○ Operating Expenditures	2,388,485
○ Federal Election Activity	390,806
○ Transfers to Affiliates and Other Political Committees	9,152
○ Other Disbursements	38,475
Total Disbursements	\$2,826,918
Cash-on-hand @ December 31, 2012	\$ 41,193

Part III

Summaries

Commission Findings

Finding 1. Receipt of Prohibited Contributions

During audit fieldwork, a review of contributions revealed that URP deposited five apparent prohibited contributions totaling \$23,600 into its federal account. URP transferred \$23,600 into a non-federal account, albeit in an untimely manner, to correct this matter. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP did not provide any documentation to demonstrate the funds were transferred within thirty days of the date on which it discovered the contributions were prohibited. URP's counsel stated that URP has long since remedied the issue identified for this finding. The Audit staff concluded that URP untimely resolved prohibited contributions totaling \$23,600.

The Commission approved a finding that URP deposited in its federal account prohibited contributions totaling \$23,600 that were untimely resolved.
(For more detail, see p. 7.)

Finding 2. Receipt of Contributions that Exceeds Limits

During audit fieldwork, the Audit staff identified apparent excessive contributions from three individuals that exceeded contribution limits by \$42,925. These errors occurred as a result of URP not resolving the excessive portion of the contributions by issuing a refund to the contributor or making a transfer to a non-federal account in a timely manner. Subsequently, URP transferred the excessive portion of the contributions to a non-federal account, albeit untimely. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP did not provide any documentation to demonstrate the funds were transferred within 60 days of receiving the excessive contributions. URP's counsel stated that URP has long since remedied the issue identified for this finding. The Audit staff concluded that URP untimely resolved excessive contributions totaling \$42,925.

The Commission approved a finding that URP accepted contributions that exceeded the limits by \$42,925 and the funds were untimely resolved with a transfer to a non-federal account.
(For more detail, see p. 10.)

Finding 3. Misstatement of Financial Activity

During audit fieldwork, a comparison of URP's reported financial activity with its bank records revealed a misstatement of financial activity for receipts in 2011 totaling \$107,013 and an overstated ending cash-on-hand balance totaling \$10,028. In addition, URP had a misstatement of receipts and disbursements for 2012. In 2012, URP understated its receipts and disbursements by \$114,582 and \$96,176, respectively. In

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response to the Interim Audit Report recommendation, URP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012. In response to the Draft Final Audit Report, URP's counsel stated that URP resolved the issue by amending its disclosure reports.

The Commission approved a finding that URP misstated its financial activity for the calendar years 2011 and 2012.
(For more detail, see p. 13.)

Finding 4. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that URP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to URP employees totaling \$285,242 for which URP did not maintain monthly payroll logs. This consisted of \$269,776 for which payroll was allocated with federal and non-federal funds, and \$15,466 for which payroll was exclusively paid with non-federal funds. URP stated it did not maintain monthly payroll logs during the 2012 election cycle but intends to maintain such payroll logs in the future. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP's counsel stated that URP has long since remedied the issue identified for this finding. URP complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

The Commission approved a finding that URP failed to maintain monthly payroll logs totaling \$270,738, which consisted of \$269,776 that URP disclosed as having been paid with an allocation of federal and non-federal funds and \$962 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to \$14,504 in payroll paid exclusively with non-federal funds, and, as such, these expenses are presented as an "Additional Issue."
(For more detail, see p. 16.)

Finding 5. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that URP failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323 on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, URP filed amended reports to disclose \$101,711 of the \$111,191 debts and obligations owed to the five vendors. However, URP did not disclose the debt totaling \$94,132 for the staff member because it disagreed that these items should be considered as debt. In response to the Draft Final Audit Report, URP stated it already amended its disclosure reports as recommended by the Audit staff. As a result of not reporting the staff member's debt, URP did not materially correct the reporting of debts and obligations.

The Commission approved a finding that URP failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323 on Schedule D.
(For more detail, see p. 18.)

Finding 6. Apparent Excessive Contribution-Staff Advance

One URP staff member received reimbursements for credit card expenditures totaling \$46,904 that appear to have been reimbursed untimely. URP did not provide the staff member's credit card billing statements to support the reimbursements were made within 60 days after the closing date of the billing statement. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP stated it strongly disagreed with this assertion because URP was not aware of the reimbursable expenses when they were incurred. URP was only aware of the staff member's reimbursable expenses after he presented receipts and/or expense reports to the treasurer. And its regular practice was to issue staff reimbursements within a calendar week of presentation of such reports. URP did not provide any documentation to demonstrate the reimbursements were made within the proper time limitations. As such, of the \$46,904 untimely reimbursements to the staff member, the Audit staff considered \$28,637 as excessive contributions from the staff member until the expenses were reimbursed. No further action will be taken since the staff member was eventually reimbursed for the expenses.

The Commission approved a finding that URP accepted contributions from a staff member that exceeded the limits by \$28,637 until the expenses were reimbursed by URP. (For more detail, see p. 22.)

Additional Issue

Recordkeeping for Employees

As detailed in Finding 4 above, URP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to URP employees totaling \$285,242 for which URP did not maintain monthly payroll logs. This consisted of \$269,776 for which payroll was allocated with federal and non-federal funds, and \$15,466 for which payroll was exclusively paid with non-federal funds. URP stated it did not maintain payroll logs during the 2012 election cycle but intends to maintain such payroll logs in the future. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP's counsel stated that URP has long since remedied the issue identified for this finding. URP complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that URP failed to maintain monthly payroll logs for the \$14,504 paid exclusively with non-federal funds during a given month. Pursuant to Commission Directive 70,² these expenses are discussed in the "Additional Issue" section, and the payroll expenditures of \$14,504 are not included in Finding 4. (For more detail, see p. 26.)

² Available at http://www.fec.gov/directives/directive_70.pdf

Part IV

Commission Findings

Finding 1. Receipt of Prohibited Contributions

Summary

During audit fieldwork, a review of contributions revealed that URP deposited five apparent prohibited contributions totaling \$23,600 into its federal account. URP transferred \$23,600 into a non-federal account, albeit in an untimely manner, to correct this matter. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP did not provide any documentation to demonstrate the funds were transferred within thirty days of the date on which it discovered the contributions were prohibited. URP's counsel stated that URP has long since remedied the issue identified for this finding. The Audit staff concluded that URP untimely resolved prohibited contributions totaling \$23,600.

The Commission approved a finding that URP deposited in its federal account prohibited contributions totaling \$23,600 that were untimely resolved.

Legal Standard

- A. Receipt of Prohibited Corporate Contributions.** Political committees may not accept contributions from the general treasury funds of corporations. This prohibition applies to any type of corporations including a non-stock corporation, as incorporated membership organization, and an incorporated membership organization, and an incorporated cooperative. 52 U.S.C. §30118.
- B. Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):
 1. In the name of another; or
 2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations; or
 - National Banks;
 3. Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 4. Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 52 U.S.C. §§30118, 30119, 30121, and 30122.

C. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

D. Federal v. Nonfederal Account. The federal account may contain only those funds that are permissible under the federal election law; the nonfederal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR 102.5 (a) (1) (i) and (a) (3).

E. Late Discovery of Prohibited Contribution. If the treasurer in exercising his or her responsibilities under 11 CFR 103.3(b) determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time of the illegality is discovered, the political committee shall make the refund from the next funds it receives. 11 CFR 103.3(b)(2).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed contributions to URP from other political committees and identified five contributions totaling \$23,600 from apparent prohibited sources. Each of these contributions appeared to be from corporations; however, the Audit staff could not verify the corporate tax status with the Utah Secretary of State. It is noted that the state of Utah allows unlimited contributions from corporations. In accordance with 11 CFR §103.3(b)(4), URP deposited these questionable funds into its federal account and maintained sufficient federal funds to refund them.

Prior to notification of the audit, URP realized the questionable funds were in fact prohibited contributions that were mistakenly deposited into the federal account and subsequently transferred \$20,000 of the \$23,600 in prohibited contributions to a non-federal account. The transfer was made more than thirty days from discovering the contributions were prohibited pursuant to 11 CFR §103.3(b)(2). Therefore, at the conclusion of audit fieldwork, the \$20,000 transfer was considered untimely resolved and the amount of prohibited contributions totaling \$3,600 remained unresolved for two of the contributors.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with URP representatives during the exit conference and provided a schedule of the apparent prohibited contributions identified in the review. URP representatives stated that some of the prohibited contributions had already been resolved and that the supporting documents have already been provided to the Audit staff.

In response to the exit conference, URP representatives reiterated that a \$20,000 transfer had already been made to a non-federal account to resolve three prohibited contributions. For the remaining prohibited amount, URP stated it would disgorge the \$3,600 at its earliest opportunity to comply with the Audit staff's recommendation. URP transferred the remaining \$3,600 prohibited contributions from the federal account to a non-federal account on August 11, 2015. The transfers, totaling \$23,600, were untimely.

The Interim Audit Report recommended URP demonstrate that transfers totaling \$23,600 to resolve the impermissible contributions were made within thirty days of the date on which it discovered the contributions were prohibited. Absent such a demonstration, the Audit staff would conclude that URP transferred the prohibited contributions totaling \$23,600 in an untimely manner.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP's counsel stated that URP has long since remedied the issue identified for this finding. URP did not provide any documentation to demonstrate the funds were transferred within thirty days of the date on which it discovered the contributions were prohibited. The Audit staff concluded that URP untimely resolved prohibited contributions totaling \$23,600.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that URP untimely resolved prohibited contributions totaling \$23,600 by making transfers to a non-federal account.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated the issue identified in the finding was remedied.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP deposited in its federal account prohibited contributions totaling \$23,600 that were untimely resolved.

The Commission approved the Audit staff's recommendation.

Finding 2. Receipt of Contributions that Exceeds Limits

Summary

During audit fieldwork, the Audit staff identified apparent excessive contributions from three individuals that exceeded contribution limits by \$42,925. These errors occurred as a result of URP not resolving the excessive portion of the contributions by issuing a refund to the contributor or making a transfer to a non-federal account in a timely manner. Subsequently, URP transferred the excessive portion of the contributions to a non-federal account, albeit untimely. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP did not provide any documentation to demonstrate the funds were transferred within 60 days of receiving the excessive contributions. URP's counsel stated that URP has long since remedied the issue identified for this finding. The Audit staff concluded that URP untimely resolved excessive contributions totaling \$42,925.

The Commission approved a finding that URP accepted contributions that exceeded the limits by \$42,925 and the funds were untimely resolved with a transfer to a non-federal account.

Legal Standard

- A. Party Committee Limits.** For the 2012 election cycle, a party committee may not receive more than a total of \$10,000 per year from any one contributor.
52 U.S.C. §30116(a)(1)(D) and 11 CFR §110.9.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
1. Return the questionable check to the donor; or
 2. Deposit the check into its federal account and:

- Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include the explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution of the excessive portion, following the instructions provided in Commission regulations (see below for explanation of reattribution); and
 - If the committee does not receive a proper reattribution within 60 days after receiving the excessive contribution, refund the excessive portion to the donor.
- 11 CFR §§103.3(b)(3),(4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. Commission regulations permit committees to ask donors of excessive contributions whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to *reattribute* the excess amount to the other contributor. The committee must inform the contributor that:

1. The reattribution must be signed by both contributors;
2. The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Facts and Analysis

A. Facts

The Audit staff's review of contributions indicated that URP deposited apparent excessive contributions from three individuals totaling \$42,925 into its federal account. These excessive contributions were a result of URP not refunding or transferring the excessive portion to a non-federal account in a timely manner. URP did maintain sufficient funds in its federal accounts to make the refunds during the audit cycle. The three individuals each made the contributions in 2012 with checks imprinted with single accountholders. It is unclear if the contributors intended their contributions to be for URP's federal or non-federal accounts.

Prior to notification of the audit, URP realized the contributions were excessive. URP reported the \$42,925 as federal contributions on Schedule A (Itemized Receipts) as well

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as debt to the non-federal account on Schedule D (Debts and Obligations). In order to resolve the excessive portions, URP subsequently made transfers totaling \$42,925 to a non-federal account in January and April 2014. However, the transfers were required to be made within 60 days of receipt of the original contributions and were therefore considered untimely.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided URP representatives a schedule of the apparent excessive contributions. URP representatives stated the contributions were deposited into the federal account but should have been deposited into a non-federal account. Once discovered, URP reported the transactions as debt owed to a non-federal account until the transfers were made. URP representatives added that documentation had already been provided to the Audit staff.

In response to the exit conference, URP representatives stated they have already taken corrective action and did not believe any further remedial measures were needed at that time. Supporting documentation was also provided. The Audit staff acknowledged the subsequent transfers totaling \$42,925 to a non-federal account as a remedy for the excessive amount was made in an untimely manner.

The Interim Audit Report recommended URP demonstrate that the funds were transferred timely (within 60 days of receiving the excessive contribution). Absent such a demonstration, the Audit staff would conclude that URP transferred the \$42,925 excessive contributions in an untimely manner.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP's counsel stated that URP has long since remedied the issue identified for this finding. URP did not provide any documentation demonstrating the funds were transferred within 60 days of receiving the excessive contributions. The Audit staff concluded that URP untimely resolved excessive contributions totaling \$42,925.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that URP untimely resolved the excessive contributions totaling \$42,925 by making transfers to a non-federal account.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated the issue identified in the finding was remedied.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP accepted contributions that exceeded the limits by \$42,925 and the funds were untimely resolved with a transfer to a non-federal account.

The Commission approved the Audit staff's recommendation.

Finding 3. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of URP's reported financial activity with its bank records revealed a misstatement of financial activity for receipts in 2011 totaling \$107,013 and an overstated ending cash-on-hand balance totaling \$10,028. In addition, URP had a misstatement of receipts and disbursements for 2012. In 2012, URP understated its receipts and disbursements by \$114,582 and \$96,176, respectively. In response to the Interim Audit Report recommendation, URP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012. In response to the Draft Final Audit Report, URP's counsel stated that URP resolved the issue by amending its disclosure reports.

The Commission approved a finding that URP misstated its financial activity for the calendar years 2011 and 2012.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year, and;
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. 30104 (b)(1),(2),(3),(4) and (5).

Facts and Analysis

A. Facts

As part of audit fieldwork, the Audit staff reconciled URP's reported financial activity with its bank records for 2011 and 2012. For the 2011 bank reconciliation, the Audit staff identified a misstatement of receipts and of the ending cash-on-hand balance. For the 2012 bank reconciliation, URP understated both its receipts and disbursements. The following charts detail the discrepancies between URP's disclosure reports and its bank records, and the succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$183	\$421	\$238 Understated
Receipts	\$542,049	\$532,991	\$9,058 Overstated
Disbursements	\$537,131	\$538,339	\$1,208 Understated
Ending Cash Balance @ December 31, 2011	\$5,101	(\$4,927)	\$10,028 Overstated

Receipts in 2011 were overstated by \$9,058. However, when evaluating the identified errors, regardless of whether the errors were positive or negative (absolute value), the receipts were misstated by \$107,013. In addition, the \$10,028 overstatement of ending cash-on-hand balance resulted from the following adjustments that should be made to correct the reporting of receipts totaling \$107,013:

• Transfers from non-federal accounts, over reported	\$36,301
• Transfers from non-federal accounts, not reported	49,026
• Contributions from individuals, not reported	25
• Contributions over reported (not supported by a deposit)	15,500
• Unitemized contributions, over reported	<u>6,161</u>
Sum of Reporting Adjustments	<u>\$ 107,013</u>

2012 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$5,101	(\$4,927)	\$10,028 Overstated
Receipts	\$2,220,117	\$2,334,699	\$114,582 Understated
Disbursements	\$2,192,403	\$2,288,579	\$96,176 Understated
Ending Cash Balance @ December 31, 2012	\$32,816³	\$41,193	\$8,377 Understated

The understatement of receipts resulted from the following:

• Transfers from non-federal accounts, over reported	(\$20,584)
• Transfer from non-federal accounts, not reported	133,058
• Contributions from political committees, individuals & refunds not reported	66,758
• Contributions from individuals and political committees over reported	(15,668)
• Unitemized contributions, over reported	(11,351)
• Unexplained differences	<u>(37,631)</u>
Net Understatement of Receipts	<u>\$ 114,582</u>

The understatement of disbursements resulted from the following:

• Payroll and payroll taxes, not reported	\$48,105
• Bank fees, not reported	1,387
• Vendor payments, transfers to the non-federal account, and other disbursements, not reported	75,201
• Bank fees, over reported	(5,887)
• Operating disbursements, over reported	(2,695)
• Federal Election Activity, over reported	(1,173)

³ This total does not foot due to dollar amount rounding.

• Transfers to affiliated/other party committees, over reported	(904)
• Unexplained differences	<u>(17,858)</u>
Net Understatement of Disbursements	<u>\$96,176</u>

The \$8,377 understatement of the ending cash-on-hand balance resulted from the misstatements described above.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with URP representatives at the exit conference and provided supporting schedules of the misstatements. URP representatives asked questions for clarification and stated they may amend the reports if they determined the supporting schedules provided by the Audit staff were correct.

In response to the exit conference, URP representatives stated they would amend the reports "at a time the Commission deems appropriate, in accordance with the Audit Division's instructions."

The Interim Audit Report recommended URP amend its disclosure reports to correct the misstatements noted above and reconcile the cash-on-hand balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments. The Interim Audit Report further recommended that URP adjust the cash-on-hand balance as necessary on its most recent report, noting that the adjustment was the result of prior-period audit adjustments.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012 reports.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that URP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated the issue was remedied by amending its disclosure reports.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP misstated its financial activity for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

Finding 4. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that URP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to URP employees totaling \$285,242 for which URP did not maintain monthly payroll logs. This consisted of \$269,776 for which payroll was allocated with federal and non-federal funds, and \$15,466 for which payroll was exclusively paid with non-federal funds. URP stated it did not maintain monthly payroll logs during the 2012 election cycle but intends to maintain such payroll logs in the future. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP's counsel stated that URP has long since remedied the issue identified for this finding. URP complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

The Commission approved a finding that URP failed to maintain monthly payroll logs totaling \$270,738, which consisted of \$269,776 that URP disclosed as having been paid with an allocation of federal and non-federal funds and \$962 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to \$14,504 in payroll paid exclusively with non-federal funds, and, as such, these expenses are presented as an "Additional Issue."

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for payroll. URP did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee

salaries and wages. For 2011 and 2012, URP did not maintain monthly logs for \$285,242⁴ in payroll. This amount includes payroll paid as follows to URP employees.

1. Employees reported on Schedule H4 (Disbursements for Allocated Federal/Non-Federal Activity) and paid with federal and non-federal funds during the same month (totaling \$269,776);
2. Employees reported on Schedule H4 and also paid with 100 percent non-federal funds during the same month (totaling \$962); and
3. Employees paid exclusively with non-federal funds in a given month (totaling \$14,504).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the recordkeeping requirement with URP representatives during the exit conference. URP representatives stated they believed the payroll was allocated correctly. URP did not locate any payroll logs and noted that the plan moving forward is to keep payroll logs.

In response to the exit conference, URP representatives stated that the "[p]arty undertook efforts to ensure that staff time and other expenses were properly allocated between its federal and non-federal accounts. The Party did not however, maintain monthly payroll logs during the 2012 election cycle." URP representatives further stated they intended to maintain such payroll logs in the future.

URP submitted an affidavit from the executive director during the 2011-2012 audit cycle stating that identified employees did not spend more than 25 percent of their compensated work time on activities in connection with the federal election. The affidavit further stated that the executive director also did not spend more than 25 percent of his time on activities in connection with a federal election.

The affidavit provided by URP did not resolve the recordkeeping finding because it did not document the time an employee spent in connection with a federal election.

The Interim Audit Report recommended that URP provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP's counsel stated that URP has long since remedied the issue identified for this finding. Again, in response to the exit conference, URP representatives stated they did not maintain monthly payroll logs but intend to maintain monthly payroll logs in the future. As such, URP complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs.

⁴ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, and Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that URP did not maintain monthly payroll logs during the audit cycle totaling \$285,242, but intends to maintain monthly payroll logs in the future.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated the issue identified in the finding was remedied.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP failed to maintain monthly payroll logs totaling \$285,242, as required, to document the percentage of time each employee spent in connection with a federal election.

The Commission approved a finding that URP failed to keep monthly payroll logs totaling \$270,738, which consisted of \$269,776 that URP disclosed as having been paid with an allocation of federal and non-federal funds and \$962 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to the \$14,504 in payroll paid exclusively with non-federal funds during a given month and, as such, the matter is presented in the "Additional Issue" section.

Finding 5. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that URP failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323 on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, URP filed amended reports to disclose \$101,711 of the \$111,191 debts and obligations owed to the five vendors. However, URP did not disclose the debt totaling \$94,132 for the staff member because it disagreed that these items should be considered as debt. In response to the Draft Final Audit Report, URP stated it already amended its disclosure reports as recommended by the Audit staff. As a result of not reporting the staff member's debt, URP did not materially correct the reporting of debts and obligations.

The Commission approved a finding that URP failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323 on Schedule D.

Legal Standard

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).
- B. Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement

explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

D. Advances by Committee Staff and Other Individuals.

1. **Scope.** This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR §§116.3 and 116.4.
2. **The treatment as contributions.** The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted under 11 CFR 100.79, it shall be considered a contribution by the individual unless-
 - a) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and
 - b) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determine which charges are included on that billing statement. In addition, "subsistence expense" includes only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging. 11 §CFR 116.5(b).
3. **Treatment as debts.** A political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed. 11 CFR §116.5(c).
4. **Settlement or forgiveness of the debt.** The individual and political committee may agree to the total forgives of the debt (see 11 CFR §116.8) or settlement of the debt if less than the entire amount owed (See 11 CFR §116.7), provided that the requirements of 11 CFR §116.7 or §116.8, as appropriate, including the submission of the information specified in these sections and Commission review, are satisfied. The provision of this part shall not be construed to require the individual to forgive or settle the debt for less than the entire amount owed.
5. **Reporting.** The political committee shall continue to report the obligation arising from the payment as a debt in accordance with 11 CFR §116.7(f) or until the

Commission has completed a review of the request to forgive the debt pursuant to 11 CFR §116.8, or until the political committee pays the debt, whichever occurs first. 11CFR §116.5.

Facts and Analysis

A. Facts.

During audit fieldwork, the Audit staff reviewed URP's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts totaling \$205,323⁵ that URP failed to report on Schedule D during the audit period concerning five vendors and one staff member.⁶ Based on the records, the five vendors totaling \$111,191 provided mainly catering, mailings/printing services, software, equipment rental and administrative expenses. The Audit staff calculated the debts to the vendors based on the invoice date and the subsequent payment date. Most of the debts were greater than \$500 and were outstanding for periods ranging from 31 to 416 days.

The debt related to the staff member, totaling \$94,132, was for reimbursements for committee expenses paid with the staff member's personal credit card. Most reimbursements were made more than 60 days from the date of the expense per the reimbursement form. The debt amount for the staff member was calculated based on provided documentation consisting of an expense reimbursement form submitted by the staff member, and/or invoices. The Audit staff used the individual dates of incurrence listed on the expense reimbursement form. The Audit staff did not use the date the reimbursement form was submitted because this date was unknown. Documentation such as the staff member's credit card billing statements, requested by the Audit staff, was not provided. URP provided one credit card statement with the closing billing date during fieldwork.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the reporting of debts and obligations with URP representatives and provided a schedule detailing the transactions requiring disclosure on Schedule D. URP representatives acknowledged they understood the schedules for vendors. They further stated the staff member turned in the expense reports late so URP did not know when the expenses needed to be reimbursed or that the expenses had been incurred. Therefore, the expenses could not have been reported correctly.

In response to the exit conference, URP representatives noted that most of the debt items were related to expense reimbursements paid to the staff member. URP representatives questioned the Audit staff's date calculation and stated they were not aware of the staff member's expenses until after receipts and/or expense reports were presented to the treasurer, which frequently occurred well after the underlying expenses were incurred.

⁵ Each debt in this amount was counted once even if it is a required disclosure over multiple periods. In order for URP to correctly file amended reports, schedules were provided that included the amount of each debt required to be reported for each reporting period.

⁶ The staff member is also discussed in Finding 6 for possible violation of 11 CFR §116.5(b), advances by committee staff considered a contribution.

URP representatives added the regular practice was to issue reimbursements to the staff member within a calendar week of receipt of the expense reimbursement form. URP feels that the Audit staff should not consider these expenses as debt items from the date they were incurred since, generally, URP was not aware of the expense until well after the date of incurrence.

The Audit staff acknowledged that providing this individual's credit card statements with the billing cycle closing date could have reduced some of the debt disclosure omissions for the staff member. However, unless copies of the credit card statements were provided to show the closing date of the billing cycle, the Audit staff's analysis would remain unchanged. URP offered no further comments on the five vendors representing \$111,191 of the undisclosed debt and obligations.

The Interim Audit Report recommended URP provide documentation demonstrating the expenditures totaling \$205,323 did not require reporting on Schedule D; or provide the staff member's credit card billing statements with the closing date of the billing cycle. The Interim Audit Report further recommended that absent such documentation, URP amend its reports to disclose debts and obligations totaling \$205,323 on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP filed amended reports to disclose \$101,711 of the \$111,191 in debts for the five vendors. However, URP did not disclose any of the staff member's debt totaling \$94,132. URP restated they were not aware of the staff member's expenses until after receipts and/or expense reports were presented to the treasurer. The regular practice was to issue reimbursements within a calendar week of receipt of the expense reimbursement form. Therefore, URP did not think these expenses were debt.

It is noted URP did not provide any documentation demonstrating the date it received the expense reimbursement forms from the staff member. Nor did URP provide the staff member's credit card billing statements with the closing date of the billing cycle. Without this information to document alternative dates, the Audit staff's debt calculation continued to be based on the individual date of incurrence listed on the expense reimbursement forms provided during fieldwork. The total debt not reported was \$103,612 (\$94,132 + \$9,480). As such, URP did not materially correct the reporting of debts and obligations.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that URP filed amended reports to disclose \$101,711 of the debts and obligations owed to the five vendors, but did not materially correct the reporting of debts and obligations since it did not disclose any of the staff member's debt totaling \$94,132 on Schedule D.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated it already amended its disclosure reports as recommended by the Audit staff and continued to disagree that the \$94,132 owed to the staff member should be considered as debt.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323 on Schedule D.

The Commission approved the Audit staff's recommendation.

Finding 6. Apparent Excessive Contribution- Staff Advance

Summary

One URP staff member received reimbursements for credit card expenditures totaling \$46,904 that appear to have been reimbursed untimely. URP did not provide the staff member's credit card billing statements to support the reimbursements were made within 60 days after the closing date of the billing statement. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP stated it strongly disagreed with this assertion because URP was not aware of the reimbursable expenses when they were incurred. URP was only aware of the staff member's reimbursable expenses after he presented receipts and/or expense reports to the treasurer. And its regular practice was to issue staff reimbursements within a calendar week of presentation of such reports. URP did not provide any documentation to demonstrate the reimbursements were made within the proper time limitations. As such, of the \$46,904 untimely reimbursements to the staff member, the Audit staff considered \$28,637 as excessive contributions from the staff member until the expenses were reimbursed. No further action will be taken since the staff member was eventually reimbursed for the expenses.

The Commission approved a finding that URP accepted contributions from a staff member that exceeded the limits by \$28,637 until the expenses were reimbursed by URP.

Legal Standard

A. Advances by Committee Staff and Other Individuals.

1. **Scope.** This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR §§116.3 and 116.4.
2. **The treatment as contributions.** The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the

payment is exempted under 11 CFR 100.79, it shall be considered a contribution by the individual unless-

- a) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and
 - b) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determine which charges are included on that billing statement. In addition, "subsistence expense" includes only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging. 11 §CFR 116.5(b).
3. **Treatment as debts.** A political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed. 11 CFR §116.5(c).
 4. **Settlement or forgiveness of the debt.** The individual and political committee may agree to the total forgives of the debt (see 11 CFR §116.8) or settlement of the debt if less than the entire amount owed (See 11 CFR §116.7), provided that the requirements of 11 CFR §116.7 or §116.8, as appropriate, including the submission of the information specified in these sections and Commission review, are satisfied. The provision of this part shall not be construed to require the individual to forgive or settle the debt for less than the entire amount owed.
 5. **Reporting.** The political committee shall continue to report the obligation arising from the payment as a debt in accordance with 11 CFR §116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR §116.8, or until the political committee pays the debt, whichever occurs first. 11 CFR §116.5.

B. Travel Expenses Exceeding \$2,000 Exemption. Payments for transportation expenses⁷ that exceed the \$2,000 travel exemption are considered contributions unless the committee reimburses them:

- Within 60 days⁸, if the payments were made on a credit card; or
- Within 30 days, if the payments were made with cash or a check. 11 CFR §116.5(b) and 100.79(a)(2).

C. Party Committee Limits. A party committee may not receive more than a total of \$10,000 a year from any one contributor. 52 U.S.C. §30116(a)(1)(D).

⁷ Including usual and normal subsistence expenses (such as food and lodging) incurred while traveling on behalf of the candidate.

⁸ Sixty days after the closing date of the credit card billing statement where the charge first appeared.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed individuals who received reimbursements from URP. One staff member received reimbursements totaling \$197,850 throughout the audit cycle for expenditures paid mostly with the employee's personal credit card.⁹ Of these reimbursements, \$46,904 was more than 60 days from the date of the expense per the reimbursement form. The Audit staff calculated the days outstanding by using the individual dates of incurrence listed on the expense reimbursement form. Of the \$46,904 untimely reimbursements, \$28,637 (\$46,904 - \$18,267) is considered an excessive contribution from the staff member, pursuant to 11 CFR §116.5(b).¹⁰

URP provided invoices, receipts, and expense reimbursement forms to support the expenditures but provided only one credit card statement with the closing billing date during audit fieldwork. None of these untimely reimbursements were for travel expenses that were reimbursed within 60 days from the date of the expense per the reimbursement form, or within 30 days if paid with cash or check, per 11 CFR §116.5(b) and 100.79(a)(2).

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the reimbursements for the one staff member and provided a schedule detailing the transactions (with the discussion of debts and obligations at Finding 5 above). URP representatives stated the staff member turned in the expense reports late so URP did not know when the expenses needed to be reimbursed or that the expenses had been incurred.

In response to the exit conference, URP representatives questioned the Audit staff's date calculation and stated they were not aware of the staff member's expenses until after receipts and/or expense reports were presented to the treasurer, which frequently occurred well after the underlying expenses were incurred. URP representatives added the regular practice was to issue reimbursements to the staff member within a calendar week of receipt of the expense reimbursement form.

The Audit staff acknowledged that providing this individual's credit card statements with the billing cycle closing date could have reduced the amount considered to be an excessive contribution from the employee. However, unless copies of the credit card statements with the billing cycle closing date were provided to demonstrate the reimbursements were timely, the Audit staff's analysis would remain unchanged. The

⁹ Based on the documentation provided, the Audit staff could not verify if five transactions were paid using the employee's personal credit card versus cash or check.

¹⁰ The untimely staff reimbursements totaled \$50,904. The amount was adjusted to \$46,904 after applying the \$4,000 travel allowance per 11 CFR §100.79(a)(2). The amount was further adjusted because an individual may contribute up to \$10,000 per year to a state party. The staff member contributed \$1,733 in 2011 and did not make a contribution to URP in 2012. Therefore, the staff member could have contributed \$18,267 (\$20,000 - \$1,733).

\$28,637 was considered an excessive contribution from the staff member until reimbursed.

The Interim Audit Report recommended URP provide documentation, such as the employee's credit card statement with the closing billing date, to demonstrate the reimbursements were timely.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP stated it strongly disagreed with this finding. URP restated it only became aware of the staff member's reimbursable expenses after he presented receipts and/or expense reports to the treasurer, which frequently occurred after the underlying expenses were incurred. In addition, URP said the regular practice was to issue staff reimbursements within a calendar week of presentation. Given this practice, URP felt the Commission should not consider these expenses as in-kind contributions as of the date they were incurred.

The Audit staff maintained the closing date on the billing statement is important because it is used as the trigger date to determine if the expenses initially paid for by the staff member will result in a contribution to URP. Specifically, the Commission's regulations require payments by a committee staff member to be treated as contributions, unless the payments are exempt from the definition of contribution as unreimbursed transportation and subsistence expenses under 11 CFR §100.79 and 11 CFR §116.5(b). If the payments are not exempt, they are contributions unless (1) the payments are for a staff member's travel expense or subsistence expenses incurred while traveling on behalf of the committee, and (2) the committee reimburse the staff member within 60 days "after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used". 11 CFR §116.5(b)(1) & (2).

URP provided one credit card statement with a billing closing date. Given that most credit card statements are 30 days or one month in length, if the Audit staff was to infer the other closing dates based on the one credit card statement that was available with a closing date in lieu of the actual billing date, the total amount of excessive contributions from the staff member would no longer be material.¹¹ However, inferring the closing date is not as precise as using the actual billing date. Without all the necessary credit card billing statements, the Audit staff cannot verify that the staff member was reimbursed within sixty days after the closing date of the billing statement.

The Audit staff noted URP did not provide all the necessary credit card statements of the staff member with the closing billing dates, nor did URP provide documentation to demonstrate the date it received the expense reimbursement form. Without this documentation to show the reimbursements were made within the proper time limitations,

¹¹ If the inferred billing date is used in lieu of the actual billing closing dates from the credit card statements as provided by the committee, the total amount of debts and obligations not disclosed for the staff member reduces from \$94,132 to \$44,613. See Finding 5-Report of Debts and Obligations, page 18.

URP received excessive contributions totaling \$28,637 from the staff member until the expenses were reimbursed. No further action will be taken since the staff member was eventually reimbursed for the expenses.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged URP disagreed the staff member's reimbursements should be considered excessive contributions. But without the necessary documentation to show the reimbursements to the staff member were made timely, the Audit staff considered \$28,637 as excessive contributions from the staff member until the expenses were reimbursed. No further action will be taken since the staff member was eventually reimbursed for the expenses.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated that it strongly disagreed with this finding because it was not aware of the staff member's reimbursable expenses when they were incurred. URP further stated that it knew and could know of these expenses only after the staff member presented receipts and/or expense reports to the treasurer, which frequently occurred well after the underlying expenses were incurred. URP's regular practice was to issue reimbursements to the staff member within a calendar week of this presentation. Given this practice, URP felt the Commission should not consider these expenses as contributions as of the date incurred. URP also agreed with the Audit staff that no further action should be taken in this matter since the staff member was eventually reimbursed for the expenses.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP accepted contributions from a staff member that exceeded the limits by \$28,637 until the expenses were reimbursed by URP.

The Commission approved the Audit staff's recommendation.

Part V Additional Issue

Recordkeeping for Employees

Summary

As detailed in Finding 4 above, URP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to URP employees totaling \$285,242 for which URP did not maintain monthly payroll logs. This consisted of \$269,776 for which payroll was allocated with federal and non-federal funds, and \$15,466 for which payroll was exclusively paid with non-federal funds. URP stated

it did not maintain payroll logs during the 2012 election cycle but intends to maintain such payroll logs in the future. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, URP's counsel stated that URP has long since remedied the issue identified for this finding. URP complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that URP failed to maintain monthly payroll logs for the \$14,504 paid exclusively with non-federal funds during a given month. Pursuant to Commission Directive 70,¹² these expenses are discussed in the "Additional Issue" section, and the payroll expenditures of \$14,504 are not included in Finding 4.

Legal Standard

The legal standard in Finding 4 is incorporated herein.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for payroll. URP did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, URP did not maintain monthly logs for \$285,242¹³ in payroll. This amount includes payroll paid as follows to URP employees.

1. Employees reported on Schedule H4 (Disbursements for Allocated Federal/Non-Federal Activity) and paid with federal and non-federal funds during the same month (totaling \$269,776);
2. Employees reported on Schedule H4 and also paid with 100 percent non-federal funds during the same month (totaling \$962); and
3. Employees paid exclusively with non-federal funds in a given month (totaling \$14,504).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the recordkeeping requirement with URP representatives during the exit conference. URP representatives stated they believed the payroll was allocated correctly. URP has not located any payroll logs and noted that the plan moving forward is to keep payroll logs.

In response to the exit conference, URP representatives stated that the "[p]arty undertook efforts to ensure that staff time and other expenses were properly allocated between its federal and non-federal accounts. The Party did not however, maintain monthly payroll logs during the 2012 election cycle." URP representatives further stated they intend to maintain such payroll logs in the future.

¹² Available at http://www.fec.gov/directives/directive_70.pdf

¹³ See footnote 4.

URP submitted an affidavit from the executive director during the 2011-2012 audit cycle stating that identified employees did not spend more than 25 percent of their compensated work time on activities in connection with the federal election. The affidavit further stated that the executive director also did not spend more than 25 percent of his time on activities in connection with a federal election.

The affidavit provided by URP did not resolve the recordkeeping finding because it did not document the time an employee spent in connection with a federal election.

The Interim Audit Report recommended that URP provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, URP's counsel stated that URP has long since remedied the issue identified for this finding. Again, in response to the exit conference, URP representatives stated they did not maintain monthly payroll logs but intend to maintain monthly payroll logs in the future. As such, URP complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that URP did not maintain monthly payroll logs during the audit cycle totaling \$285,242, but intends to maintain monthly payroll logs in the future.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, URP stated the issue identified in the finding was remedied.

Commission Conclusion

On December 1, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that URP failed to maintain monthly payroll logs totaling \$285,242, as required, to document the percentage of time each employee spent in connection with a federal election.

The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that URP failed to maintain monthly payroll logs for the \$14,504 in payroll paid exclusively from a non-federal account during certain months. Some Commissioners voted to approve the Audit staff's recommendation. Others did not, citing the position of three Commissioners in the Final Audit Report of the Commission on the Georgia Federal Elections Committee, in support of the proposition that the Commission lacks jurisdiction to impose recordkeeping and documentation requirements on exclusively non-federal activity.

These expenses are discussed in the "Additional Issue" section pursuant to Commission Directive 70.¹⁴

¹⁴ Available at http://www.fec.gov/directives/directive_70.pdf.

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENTS: Utah Republican Party and
6 Abram Young in his official capacity
7 as treasurer

MUR ____

8
9 **I. INTRODUCTION**

10
11 This matter was generated by a Commission audit of the Utah Republican Party
12 (“Committee”) covering the period of January 1, 2011, through December 31, 2012, and
13 additional information ascertained by the Commission in the normal course of carrying out its
14 supervisory responsibilities regarding the Committee’s activity in the 2014 election cycle that
15 was referred from the Commission’s Reports Analysis Division to the Office of General Counsel
16 (the “RAD Referral”).

17 On January 6, 2017, the Commission approved the Final Audit Report regarding the 2012
18 cycle activity, and the Audit Division referred five findings to OGC for possible enforcement
19 action: 1) receipt of prohibited contributions; 2) receipt of excessive contributions;
20 3) misstatement of financial activity; 4) recordkeeping for employees; and 5) reporting of debts
21 and obligations. OGC notified the Committee of the referral, but the Committee did not file a
22 response.

23 The RAD Referral addressed various potential violations, including prohibited and
24 excessive contributions. The Committee responded to the RAD Referral, stating that its poor
25 financial position and high personnel turnover rate “have led to previous challenges with its
26 report preparation and other tasks.”¹ The Committee does not contest the merits of the alleged
27 violations; rather, it contends that all of RAD’s requests for additional information “that led to

¹ Resp. at 1.

1 this referral, have, in fact, all been resolved to the full satisfaction of the Party's [RAD]
2 analyst."²

3 For the reasons that follow, the Commission finds reason to believe that the Committee
4 knowingly accepted prohibited contributions in violation of 52 U.S.C. § 30118(a), knowingly
5 accepted excessive contributions in violation of 52 U.S.C. § 30116(f), and made reporting errors
6 in violation of 52 U.S.C. §§ 30104(b)(8), 11 C.F.R. §§ 104.3(d), and 106.7(d)(1).

7 II. FACTUAL AND LEGAL ANALYSIS

8 A. Audit Report (2012 Cycle Activity)

9 The Commission finds reason to believe as to four of the five findings referred to OGC.
10 The first two concern impermissible contributions and the last two concern reporting violations.³
11 The Committee did not file a response to the Audit Referral.

12 1. Prohibited Contributions

13 Corporations are prohibited from contributing to federal political committees (other than
14 independent-expenditure-only committees and hybrid committees), and political committees may
15 not knowingly accept prohibited corporate contributions.⁴ The Commission found that the
16 Committee received \$23,600 in corporate contributions that it untimely transferred to a non-
17 federal account.⁵

² *Id.*

³ The Audit Division also referred a finding regarding misstatement of financial activity in 2011, but this activity is beyond the statute of limitations. *See* 28 U.S.C. § 2462; Final Audit Report at Finding 3.

⁴ 52 U.S.C. § 30118(a); Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011).

⁵ Final Audit Report at Finding 1.

1 **2. Excessive Contributions**

2 The contribution limit to State party committees is \$10,000 per year.⁶ No committee may
3 knowingly accept more than the contribution limit.⁷ The Commission found that the Committee
4 received \$42,925 in excessive contributions that it untimely transferred to a non-federal
5 account.⁸

6 **3. Recordkeeping for Employees**

7 Commission regulations provide that State, district, and local party committees must
8 maintain monthly employee payroll logs. Salaries, wages, and fringe benefits “[paid] to State,
9 district, or local party committee employees who spend 25 percent or less of their compensated
10 time in a given month on Federal election activity or on activity in connection with a Federal
11 election” may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds
12 from the committee’s federal and non-federal accounts.⁹ Commission regulations also provide
13 that when allocating salary, wages, and fringe benefit payments, political party committees are
14 required to “keep a monthly log of the percentage of time each employee spends in connection
15 with a Federal election.”¹⁰ As set forth in the Final Audit Report, the Commission found that the
16 Committee failed to maintain monthly payroll logs totaling \$270,738 for 2011 and 2012.¹¹

⁶ 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. § 110.1(c)(5).

⁷ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

⁸ Final Audit Report at Finding 2; *see also* 11 C.F.R. § 103.3(b)(3).

⁹ 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), (d)(2).

¹⁰ 11 C.F.R. § 106.7(d)(1).

¹¹ Final Audit Report at Finding 4. Payroll amounts are stated net of taxes and fringe benefits. The Committee submitted an affidavit in response to the audit that stated that the identified employees did not spend more than 25 percent of their time on activities in connection with a federal election. The Commission found that the affidavit did not resolve the issue because it did not document the time the employee spent on activities in

4. Reporting of Debts and Obligations

Political committees must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.¹² Debts of \$500 or less must be reported no later than 60 days after the obligation is incurred, while debts of more than \$500 must be reported as of the date the obligation is incurred.¹³ The Audit Division concluded that the Committee failed to disclose debts and obligations to five vendors and one staff member totaling \$205,323.¹⁴ In response, the Committee amended its reports to disclose debts totaling \$101,711, but maintained that \$94,132 of the \$205,323 did not need to be disclosed.¹⁵ The Commission, however, agreed with the Audit Division and found that the Committee failed to disclose debts and obligations of \$205,323.

connection with a federal election. Nor was it maintained prior to audit notification. The Committee represented that it planned to maintain employee payroll logs in the future.

¹² 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

¹³ 11 C.F.R. § 104.11(b).

¹⁴ Final Audit Report at Finding 5.

¹⁵ The Committee argued that the debts and obligations of one staff member totaling \$94,132 were not required to be disclosed because the staff member submitted the request for reimbursement late and, therefore, the Committee had no knowledge of the debts as they were incurred. Once the staff member submitted a request for reimbursement, the Committee asserts it typically reimbursed the staff member within one week. The Commission found that the Committee had provided insufficient documentation to corroborate its assertions.

1 The Committee's four violations are clear, and it acknowledged them. Accordingly, the
2 Commission finds reason to believe that the Committee knowingly accepted corporate
3 contributions in violation of 52 U.S.C. § 30118(a), knowingly accepted excessive contributions
4 in violation of 52 U.S.C. § 30116(f), failed to maintain monthly employee payroll logs in
5 violation of 11 C.F.R. § 106.7(d)(1), and failed to report debts and obligations as identified in the
6 Final Audit Report in violation of 52 U.S.C. § 30104(b)(8).

7 **B. RAD Referral (2014 Cycle Activity)**

8 The RAD Referral contains many potential violations including prohibited and excessive
9 contributions. The Committee, in its response to the referral to OGC, does not dispute the
10 violations.

11 RAD identified two prohibited corporate contributions totaling \$6,000.¹⁶ Although the
12 Committee indicated in an amended disclosure report that it would transfer the funds to a non-
13 federal account and report the transfer "in the next regularly scheduled FEC report,"¹⁷ the
14 Committee has not submitted information indicating that it has done so.

15 RAD also identified two excessive contributions of \$15,000 and \$11,000, the first of
16 which was reduced by \$5,000 due to a same-day transfer to a non-federal account.¹⁸ In response
17 to RAD's Requests for Additional Information ("RFAs"), the Committee untimely refunded the

¹⁶ RAD Referral at 1; *see also* 52 U.S.C. § 30118(a).

¹⁷ *See* Utah Republican Party Amended October Monthly Report at 8 (May 14, 2015).

¹⁸ *See* Utah Republican Party February 2014 Report at 6, 11 (Feb. 20, 2014); RFAI – February Monthly at 1 (Apr. 17, 2014); Utah Republican Party Amended October 2014 Monthly Report at 13 (May 14, 2015); RAD Referral at 1-2; *see also* 52 U.S.C. §§ 30116(a)(1)(D), (f); 11 C.F.R. § 110.9.

1 remaining excessive \$10,000 and alerted RAD that it had timely reattributed and transferred the
2 other excessive \$11,000 to a non-federal account.¹⁹

3 The Commission finds reason to believe that the Committee violated 52 U.S.C.
4 §§ 30118(a) and 30116(f) by knowingly accepting the two corporate contributions and the
5 \$10,000 excessive contribution. In light of the Committee's timely corrective action with respect
6 to the other excessive contribution and its adequate response to the majority of RAD's RFAs,
7 the Commission makes no further reason to believe findings in connection with the RAD
8 Referral.

¹⁹ RAD Referral at 1-2 and documents attached thereto.